



22 EAST MIFFLIN STREET, SUITE 900
MADISON, WI 53703
TOLL FREE: 1.866.404.2700
PHONE: 608.663.7188
FAX: 608.663.7189
www.wicounties.org

TO: Wisconsin County Officials
FROM: Kyle Christianson, Director of Government Affairs
DATE: November 4, 2020
SUBJECT: Levy Limit Exception for Unreimbursed Costs

In recent weeks, WCA has engaged in conversations surrounding the state's levy limit law and an exemption to the law related to unreimbursed costs due to a public health emergency.

As counties are aware, the levy limit statute (Wis. Stat. sec. 66.0602) provides certain exceptions for categories of expenses that are not subject to the levy limit calculation. Section 66.0602(3)(e)8. contains an exception that, until now, has not been frequently utilized. This exception provides that the levy limit does not apply to:

The amount that a political subdivision levies in that year to pay the unreimbursed expenses related to an emergency declared under s. 323.10, including any amounts levied in that year to replenish cash reserves that were used to pay any unreimbursed expenses related to that emergency. A levy under this subdivision that relates to a particular emergency initially shall be imposed in the year in which the emergency is declared or in the following year.

Based upon this language, the levy limit exception applies to (1) unreimbursed expenses, (2) related to an emergency declared under s. 323.10, (3) in the year in which the emergency is declared or the following year.

1. Unreimbursed Expenses. The COVID-19 pandemic has created significant unanticipated expenses for counties. Many of you have submitted claims for reimbursement under the Routes to Recovery Grant program, which is funded through the CARES Act. Nonetheless, there may be expenses that your county has incurred that will either (1) not be reimbursed through Routes to Recovery; or (2) be deemed ineligible for funding under Routes to Recovery.

The levy limit exception in sec. 66.0602(3)(e)8. is not related to the Routes to Recovery program. In other words, your county is eligible to claim an exception to the statutory levy limit for expenses attributable to

the declared emergency without regard to the county's eligibility for reimbursement under Routes to Recovery.

2. Declared Emergency. We have operated under a state of emergency declared under Wis. Stat. sec. 323.10 (declaration by Governor) in the following time periods in 2020:
 - March 12 to May 11
 - July 30 to present (set to expire November 21)
3. Timing of Levy Limit Exception. The declared state(s) of emergency occurred in 2020. According to the statute, any expenses incurred this year are eligible for the levy limit exception in setting the levy for 2021 or for 2022.

The Department of Revenue (DOR) has not had an opportunity to interpret and apply the levy limit exception found in Wis. Stat. sec. 66.0602(3)(e)8. Based upon our discussions with DOR, the exception has, until now, been used in natural disaster situations involving FEMA funding. Nonetheless, the statute is not limited in its scope or application to natural disaster or FEMA-qualifying events.

Likewise, there is no administrative code provision defining the categories of expenses eligible for the levy limit exception. All that is required is that the expense be an unreimbursed (through state or federal funds) expense related to the declared state of emergency.

The Association encourages counties to speak with corporation counsel, administration and finance staff to create a schedule of expenses related to the pandemic that are not reimbursed through FEMA and/or Routes to Recovery programs. The schedule should be utilized in conjunction with the standard Levy Limit Worksheet to determine the total amount by which the county can exceed the statutory levy limit.

DOR is working to create additional guidance surrounding the application of this exception to the statutory levy limit. The Association will keep you apprised of further developments. In the meantime, if you have any questions, please do not hesitate to contact the WCA office at 866.404.2700.

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